

**In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Savannah Division**

In the matter of:

HAROLD JOHNSON  
(Chapter 7 Case Number 95-42744)

*Debtor*

WILEY A. WASDEN, III, TRUSTEE

*Plaintiff*

v.

HAROLD JOHNSON  
FRANKIE JOHNSON and  
JOSEPH ADDISON

*Defendants regarding  
ownership of property*

FRANKIE JOHNSON, PRISCILLA  
EVANS, EQUITY LENDING  
ASSOCIATES, TRANSAMERICA  
FINANCIAL SERVICES, ALLSTATE  
FINANCE COMPANY, LANIER  
COLLECTION AGENCY, EFFINGHAM  
COUNTY TAXING AUTHORITY, and  
SPARTAN MORTGAGE INC.

*Defendants regarding  
liens on property and  
improper transfers of  
estate proceeds*

Adversary Proceeding

Number 97-4100

**FILED**

at 11 O'clock & 57 min. A.M

Date 4-29-98

MARY C. BECTON, CLERK  
United States Bankruptcy Court  
Savannah, Georgia

**ORDER ON TRUSTEE'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

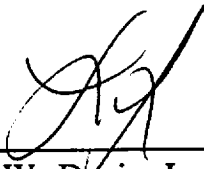
The Trustee filed this Motion on January 26, 1998, seeking a determination that, as between the Trustee and Defendant Frankie Johnson, certain conveyances of real estate by the Debtor approximately fifteen weeks prior to his filing bankruptcy were avoidable and seeking a determination that a one-half undivided interest in those tracts of land be vested in the Debtor's estate for administration by the Trustee. The Trustee's Motion was accompanied by a Statement of Material Facts and a Brief in Support of the Motion as required by the Rules of Civil Procedure and Local Rules of this Court. On February 26, 1998, Defendant Frankie Johnson's response was filed.

The Court has carefully reviewed the Trustee's Motion, the Statement of Material Facts, and the Brief and find that they make a sufficient showing that the Trustee is entitled to partial summary judgment against Frankie Johnson - that a *prima facie* case supporting the grant of the Motion has been made. Under Bankruptcy Rule 7056 it is therefore incumbent upon the Defendant to establish by affidavit or otherwise that a genuine issue of material fact does exist so as to support the denial of the Trustee's Motion.

An examination of Frankie Johnson's response contains allegations that Frankie Johnson was unaware of the insolvency of the Debtor at the time of the transfer, that the transfer was made in anticipation of a divorce, that the Debtor intended to reaffirm the mortgages on the parties' residence that existed, that the Debtor's total obligations are lower than the total value of the property, and that granting the Motion would leave the

Defendant without a place to live. None of these allegations are accompanied by an affidavit and therefore the Statement of Material Facts filed by the Trustee remain uncontradicted.<sup>1</sup> Having carefully considered the Trustee's Motion and the Defendant's response and finding the factual and legal basis for the Motion to be well-founded, the Trustee's Motion is granted and partial summary judgment is entered against Mrs. Frankie Johnson setting aside the three conveyances in question and revesting in the Trustee a one-half undivided interest in the 11.75 acre tract, the 2.5 acre tract and the 1.0 acre tract, descriptions of which are contained in Exhibits A, B and C to the Trustee's Motion.

Finally, the Court determines pursuant to Bankruptcy Rule 7054(b) that there is no just reason for delay and that final judgment as against Frankie Johnson should be entered.

  
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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 28 day of April, 1998.

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<sup>1</sup> An examination of these contentions, however, would not change the outcome even if sworn to by Mrs. Johnson. Her knowledge of the Debtor's insolvency is irrelevant. The fact that the transfer was allegedly made in anticipation of divorce is contradictory of the notion that the transfer was not to benefit Mrs. Johnson as a creditor because in a divorce setting she would indeed be a creditor of the Debtor. The Debtor's reaffirmation of the mortgages is irrelevant to the issue of whether a fraudulent conveyance or preferential transfer was made by the Debtor to this individual creditor. The relative value between the property transferred and the debts of the estate is irrelevant because if there is any surplus in the estate after payment of all debts that money will be returned to the Debtor. Finally the obvious and natural concern that she may be deprived of a place to live, while terribly unfortunate and one to which the Court is not unsympathetic, simply has no legal bearing on whether the Debtor's estate should recover this asset for distribution to all creditors including Mrs. Johnson.

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